

REMARKS

Claims 1-26 are pending, of which claims 16-26 are withdrawn.

Applicants would like to thank the Examiner for providing Applicants with a copy of provisional application No. 60/034, 490.

Applicants traverse all of the rejections in the Office Action and respectfully request reconsideration and passage of the claims to allowance for the following reasons.

REJECTION OF CLAIMS 1-15 UNDER 35 U.S.C. §103

Claims 1 – 15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gordon et al. WO 98/31115 (hereinafter "Gordon") in view of Coleman et al., U.S. Patent No. 5,844,620 (hereinafter "Coleman") and Ota et al., U.S. Patent No. 6,198,478 (hereinafter "Ota").

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2141. Establishing a *prima facie* case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The factual inquiries are as follows:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art;
- (C) resolving the level of ordinary skill in the art; and
- (D) considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. The key to supporting a rejection under 35 U.S.C. §103 is the clear articulation of the reasons why the claimed invention would have been obvious. The analysis supporting such a rejection must be explicit. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F. 3d 977, 988 (Fed.Cir. 2006), *cited with approval by KSR Int'l Co. v. Teleflex, Inc.*, 126 S. Ct. 2965 (2006); *see also* MPEP §2141.

The Office Action does not establish a *prima facie* case of obviousness because Gordon, Coleman, and, Ota, alone or in any permissible combination, fails to teach or suggest at least:

“a transport stream generator including a processor and a multiplexer, the transport stream generator for receiving demand-cast guide page usage information from the session manager, for using said information to determine if there is a demand-cast guide page currently in a demand-cast stream that is not currently being accessed and controlling which demand-cast guide pages of said array of guide pages are inserted into the demand-cast stream to replace the demand-cast guide page not currently being accessed,”

as positively recited by Applicants’ independent claim 1 (emphasis added).

The Examiner argues that the above recited element of claim 1 is taught by the combination of Gordon, Coleman, and Ota because Gordon discloses “transporting a plurality of demand cast streams within a single transport stream,” Coleman discloses transmitting demand cast pages, where “[a] single demand cast stream may contain multiple demand cast guide pages,” and Ota discloses “a demand system which will stop transmitting content which is not being accessed ... to allow those resources to be used to transmit other requested content” (see Final Office Action, page 2). Assuming *arguendo* that the above described Examiner’s interpretation of the cited references is correct, the proposed combination of the references still fails to teach the above recited element of Applicants’ claim 1.

As interpreted by the Examiner, the following elements are taught by Gordon and Coleman:

- 1) a single transport stream may contain multiple demand cast streams (Gordon); and
- 2) a demand cast stream may contain multiple guide pages (Coleman).

Accordingly, the combination of Coleman and Gordon teaches at most a transport stream containing multiple demand cast streams where each demand stream contain multiple guide pages. This may be illustrated by the following diagram, where T indicates the transport stream; A, B, and C indicate demand-

cast streams, and P1 through P4 indicate multiple guide pages of demand stream C.

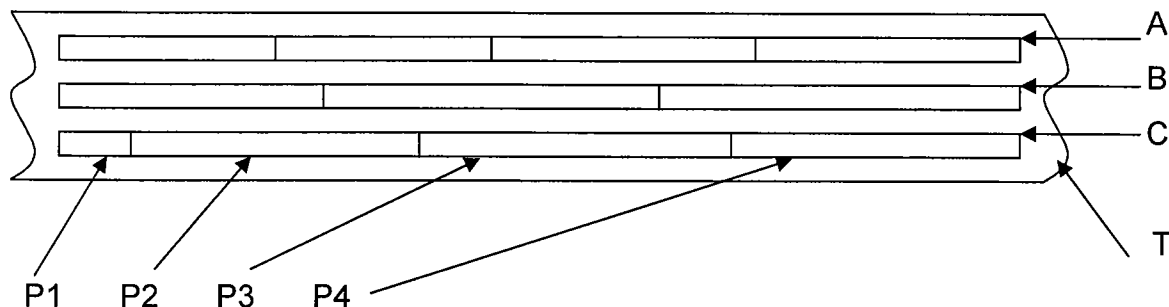


Diagram 1

The Examiner combines this combination of Gordon and Coleman with Ota and suggests that the resulting combination teaches determining a demand-cast guide page that is currently in a demand-cast stream but is not being accessed by viewers and inserting another demand-cast page into the demand-cast stream to replace the determined demand-cast guide page (see Final Office Action, pages 2-5). Applicants respectfully disagree.

As discussed previously, Ota discloses a CATV distribution system having a limited number of the transmission channels, where each channel is capable of transmitting only one program at a time. When a viewer requests a specific program and the requested program is not currently being broadcasted, then the system seeks an empty channel and the requested program is transmitted using the found channel. A channel, used for transmitting a program, may be emptied after the program transmitted over that channel is cancelled by a subscriber and no other subscriber is viewing the program. Accordingly, at most Ota teaches that a channel may be completely emptied and new content placed in the emptied channel.

Therefore, the combination of Gordon, Coleman, and Ota suggested by the Examiner teaches at most that content of one of the streams, e.g., streams A, B, or C of diagram 1, may be substituted with different content. This may be illustrated by the following diagram, where content of stream C, now indicated as C', have been replaced with new guide pages P1', P2', P3', and P4'

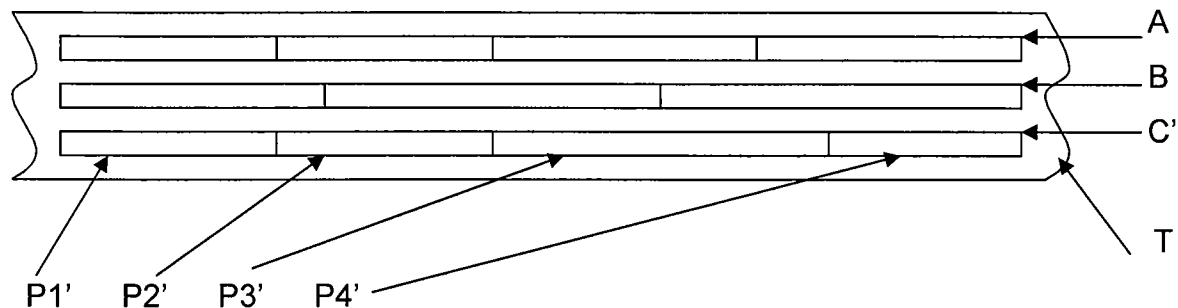


Diagram 2

Therefore, according to the combination of the references suggested by the Examiner, though only one page may currently be not accessed by viewers, e.g., guide page P2 of diagram 1, all pages of a demand stream containing such a page must be replaced, i.e., guide pages P1 through P4.

In contrast, Applicants claim determining a demand-cast guide page in a demand-cast stream that is not being accessed and inserting another demand-cast guide page to replace the determined page. Therefore, because, according to the Examiner's interpretation, the combination of the references teaches only replacing all pages in the demand stream, such a combination simply cannot read on Applicants' claim 1. Therefore, the Office Action does not establish a *prima facie* case of obviousness with respect to claim 1.

Accordingly, Applicants respectfully submit that claim 1 allowable over Gordon in view of Coleman and Ota under §103. Claims 2 – 15 depend, directly or indirectly, from claim 1 and, thus, inherit the patentable subject matter of claim 1, while adding additional elements and further defining elements. Therefore, claims 2-15 are also allowable over Gordon in view of Coleman and Ota under §103 for at least the reasons given above with respect to claim 1.

CONCLUSION

For the foregoing reasons, Applicants respectfully request reconsideration and passage of the claims to allowance. If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

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